Cutting, Incorporated *and* Local 154, United Paperworkers International Union, AFL-CIO-CLC *and* Pam O'Connell *and* Frances Griffey. Cases 25-CA-10983, 25-CA-11016, 25-CA-11655-1, and 25-CA-11655-2

April 2, 1981

DECISION AND ORDER

On October 27, 1980, Administrative Law Judge Marion C. Ladwig issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs, and Respondent filed an answering brief to the General Counsel's exceptions.

The Board has considered the record and the attached Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge as modified below, and to adopt his recommended Order, as so modified.

The General Counsel excepts, *inter alia*, to the Administrative Law Judge's dismissal of the complaint's allegation that Respondent, through Foreman Mike Keith, violated Section 8(a)(1) of the Act on May 1 and 2, 1979,[2] by soliciting employee complaints and grievances, and by promising its employees increased benefits and improved terms and conditions of employment. The Administrative Law Judge found that, about the first part of May, Keith approached employee Pam O'Connell and, in the presence of other employees, asked, "Pam, are you aware of what you are getting yourself involved in, when you are getting yourself involved with the Union?" and "What exactly is it that you are wanting that . . . the Company is not giving you?" O'Connell mentioned needing floor mats and complained about glue guns with electrical shorts, cut wires on the floor, broken toilet seats, and other matters. Keith did not expressly promise to remedy any of those complaints, although floor mats were provided to employees on May 30, and therefore the Administrative Law Judge found that the allegation must be dismissed. We do not agree.

It is well settled that "the solicitation of grievances at preelection meetings carries with it an inference that an employer is implicitly promising to correct those inequities it discovers as a result of its inquiries." *Merle Lindsey Chevrolet, Inc.*, 231 NLRB 478 (1977), citing *Uarco Incorporated*, 216 NLRB 1 (1974). Accord: *Hadbar, Division of Pur O Sil, Inc.*, 211 NLRB 333 (1974); *Reliance Electric Company, Madison Plant Mechanical Drives Division*, 191 NLRB 44 (1971). According to current Board precedent, this inference is rebuttable by the employer. *Merle Lindsey Chevrolet, supra; Uarco Incorporated, supra.*[3] However, in the instant case Respondent failed to carry its burden to rebut the inference which thus arose. The validity of the inference is demonstrated here by the remedying of one of the grievances, relating to the absence of floor mats, though such demonstration is not necessary for finding the violation. Although present at the hearing, Keith did not testify concerning this allegation. Under these circumstances, we find that by soliciting grievances from O'Connell on May 1 and 2 and, thus implicitly promising to correct those inequities, Respondent violated Section 8(a)(1) of the Act. We further find that during the same conversation, Keith interrogated O'Connell about her own and other employees' union sympathies, also in violation of Section 8(a)(1).

AMENDED REMEDY

Having found that Respondent violated Section 8(a)(1) of the Act by soliciting grievances and impliedly promising to correct those grievances, and by interrogating employee O'Connell about her and other employees' union sympathies, we shall order that Respondent, in addition to taking those remedial measures set forth in the Administrative Law Judge's Decision, also cease and desist from said violations. In addition, in view of Respondent's multiple and flagrant violations of the Act as set forth in the Administrative Law Judge's Decision and the instant Decision, we shall further modify the Administrative Law Judge's recommended remedy and Order by requiring that Respondent cease and desist from "in any other manner" interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

[1] In agreeing with the Administrative Law Judge's finding that the General Counsel failed to make a *prima facie* showing that the Union was a motivating factor in Respondent's decision to discharge employee Rick Hodge, we note that longstanding Board precedent holds that "if the record sustains the allegations of unlawful discrimination against discharged employees, their testimony is not a *sine qua non* for relief under the Act." *Riley Stoker Corporation*, 223 NLRB 1146 (1976), and cases cited therein.

Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] Unless otherwise noted, all dates are 1979.

[3] Member Jenkins dissented in *Uarco Incorporated*, and did not participate in deciding *Merle Lindsey Chevrolet*. He adheres to his view, as fully set forth in his dissent in *Uarco Incorporated*, that the mere solicitation of grievances is of itself coercive conduct violative of Sec. 8(a)(1).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Cutting, Incorporated, Hartford City, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 1(h) and reletter the subsequent paragraph accordingly:

"(h) Soliciting grievances from employees and explicitly or implicitly promising to remedy or adjust them in order to interfere with the right of employees freely to choose a bargaining representative, or to induce employees to reject, or to refrain from activities in support of, Local 154, United Paperworkers International Union, AFL-CIO-CLC, or any other labor organization, or in connection therewith to coercively interrogate employees concerning their or other employees' union sympathies."

2. Substitute the following for new paragraph 1(i):

"(i) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act."

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT refuse to reinstate any economic striker who unconditionally offers to return to work before being permanently replaced.

WE WILL NOT assign any employee more arduous job tasks in retaliation for supporting Local 154, United Paperworkers International Union, AFL-CIO-CLC, or any other union.

WE WILL NOT give an unwarranted written warning to or suspend any employee for supporting the Union.

WE WILL NOT threaten to discharge our employees or to move our plant if our employees support the Union.

WE WILL NOT threaten to discharge any union official because of union activity.

WE WILL NOT coercively question any employee about union support or union activity.

WE WILL NOT engage in unlawful surveillance of peaceful picketing or coercively threaten employees with legal proceedings for lawfully striking or picketing.

WE WILL NOT solicit grievances from employees and explicitly or implicitly promise to remedy them in order to interfere with your right freely to choose a bargaining representative, or to induce you to reject or refrain from activities in support of Local 154, United Paperworkers International Union, AFL-CIO-CLC, or any other labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Pamela O'Connell immediate and full reinstatement to her former job or, if her job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed, and make her whole for any loss of pay or other benefits since we refused to reinstate her, plus interest.

WE WILL make Frances Griffey and other former strikers who offered to return to work on October 16, 1979, whole for any lost earnings from that date until their reinstatement on October 21, 1979, plus interest.

WE WILL make Pamela O'Connell and Frances Griffey whole for any lost earnings resulting from their 3-day suspension, plus interest.

WE WILL remove from the personnel records any reference to Pamela O'Connell's written warning and to her and Frances Griffey's suspensions.

CUTTING, INCORPORATED

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge: These consolidated cases were heard by me in Hartford City, Indiana, on May 19–22, 1980. The charges were filed on May 29, June 8, and December 14, 1979,[1] and consolidated complaints were issued on July 13 and on January 31, 1980 (each amended at the hearing). These cases primarily involve contentions that, after the Union won an election at the Respondent Company's two plants, the Company discriminated against a union observer and another union supporter, falsely claimed that these two employees and other strikers were permanently replaced when they made unconditional offers to return to work, threatened to discharge the union president as soon as it could "sneak it past the NLRB," and otherwise coerced employees. The specific issues are whether the Company (a) discriminated against the Union's observer, Pamela O'Connell, and another union supporter, (b) unlawfully refused to reinstate O'Connell and other striking employees, (c) discriminatorily discharged another employee, (d) threatened to discharge the union president, and (e) otherwise coerced employees in violation of Section 8(a)(1) and (3) of the National Labor Relations Act.

Upon the entire record,[2] including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Company, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Company, an Indiana corporation, is engaged in the manufacture of paper products at its plants in Hartford City, Indiana, where it annually ships products valued in excess of $50,000 directly to customers located outside the State. The Company admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Discrimination Against Union Observer O'Connell*

1. Against her and Frances Griffey

a. *Assignment of more arduous work*

Packer Pamela O'Connell actively campaigned for the Union and acted as a union observer at the May 31 election, which the Union won. On the same day, after attending a union meeting the evening before, packer Frances "Sally" Griffey wore a 4-inch union "VOTE UPIU" badge to work and had union stickers on her truck. (She had been an employee representative on the Company's "Plant Council.") Plant Coordinator Ron Behrman called her into the office that morning and, in the presence of Supervisor Gary Brackin, explained a raise she had received. It is undisputed that, in this conversation, she told him, "I felt that I had not received all of the money I should have received from my raise. And if your people would do this to a Council person you would do it to anyone and I'm a little bit tired of people receiving raises and not getting the money they should receive. That's why I'm wearing this badge." (The alleged interrogation in this conversation is discussed later.)

Immediately after the election, as packers O'Connell and Griffey credibly testified, Supervisor Brackin increased their janitorial work on a regular basis and assigned them more of the difficult and unpleasant work, such as cleaning the large machines, washing walls, and other onerous duties. They estimated that they were assigned this excessive cleaning and more arduous tasks perhaps once every week or two. On two occasions in June, on June 1 and 27, the assignments were considered so extreme that O'Connell made a note of them in her pocket calendar. (She was mistaken in recalling that she also recorded other such incidents in the calendar.)

It is undisputed that on the first of these occasions, on June 1 (the day after O'Connell acted as a union observer and Griffey told Plant Coordinator Behrman and Supervisor Brackin why she was "wearing this [union] badge"), Brackin instructed O'Connell and Griffey to take a "huge" factory sweeper and sweep the entire floor of plant 2—including all of the factory floor, the bathroom, the break area, and the office. Brackin also instructed O'Connell to go into the bathroom and wash down the walls and mop the floor, and "informed me that he wanted me to get down on my hands and knees and clean the toilet bowl and stick my hands into the toilet and clean it. And I asked for a rubber glove and I was not given a set of rubber gloves" (although rubber gloves were available).

It is also undisputed that on the other occasion, on June 27, Plant Coordinator Behrman instructed O'Connell to clean out the second floor storage area, where President Brian Jennerjahn kept such items as a snowmobile and old car parts and where there were "all kinds of tools" and some heavy logs which "looked like railroad ties." Supervisor Brackin asked her to move the logs and "put them on the side of the wall." When she could not budge them, she asked him for help "and he goes over and starts to move it and he can't and he says to me, well just forget it." Machine operator (later supervisor) David Whitecotton was there with her, but Brackin permitted him to remain seated and not give her any help. As instructed, she hauled the trash (including plywood, paneling, and pieces of counter top) downstairs where Behrman went through it and instructed her to carry some of it back upstairs. Meanwhile Brackin assigned Griffey (a woman 59 years of age) to washing down and painting the overhead door, requiring her to stand on the second from the top step of an 8-foot ladder, and to paint the front and side doors, using a 2-inch paintbrush. She asked Brackin for a roller to speed up the painting proc-

[1] All dates are in 1979 unless otherwise indicated.

[2] The General Counsel's unopposed motion to correct the record, dated July 16, 1980, is granted and received in evidence as G.C. Exh. 11.

ess and he said he would get one, but he did not. She painted for 8 hours, using the 2-inch brush.

When called as defense witnesses, machine operator Susan Lents and Whitecotton (now a laid-off supervisor) claimed that they did not observe any change in the job responsibilities of O'Connell and Griffey after the election; machine operator Ron Warner claimed that O'Connell and Griffey did not have to do more of such duties after the election than other packers; and packer Katy Strait (sister of Foreman Michael Keith) claimed that "more or less everybody *wanted to do the bathrooms* and the break rooms . . . *it was fun*," that O'Connell and Griffey "*always refused*" to go in the bathroom to clean it because they said they were not required to, and that "[*t*]*hey weren't told* to do it." (Emphasis supplied.) These witnesses appeared eager to give testimony which would please the Company rather than willing to reveal what actually happened. I discredit their claims and find, as contended by the General Counsel, that after the election the Company assigned O'Connell and Griffey more arduous job tasks in retaliation against them because of their union support, in violation of Section 8(a)(3) and (1) of the Act.

b. *Their suspension*

It is undisputed that on Thursday, June 7, 1 week after the election, Plant Coordinator Behrman summoned packers O'Connell and Griffey to the office and summarily suspended them for 3 days. In the presence of Supervisor Brackin (who assigned O'Connell and Griffey more arduous work after their union support on the day of the election), Behrman announced to them, "You two got yourselves a three day layoff." Later in the conversation, he pointed his finger at O'Connell and said, "You, Pam, will not come in here and tell me how to run my plant nor will you bring anyone else in here to run my plant"—obviously referring to her union activity, although he did not explain. When Griffey asked the reason for her suspension, he pointed his finger at her and said, "Sally, you are not coming in here and threatening my employees." She asked whom she was supposed to have threatened, and he responded, "I will not tell you who, and I don't care to discuss it with you." Then O'Connell spoke up and asked who Behrman's informant was, and Griffey stated, "Pam, you don't need to know who his informant is, I know who his informant is . . . she is not only an informant, she is a liar. . . . It is Katy Strait." Behrman confirmed this, without making any inquiry about the truth of what Strait had reported to him. Griffey denied that she had threatened any employee. Behrman ordered them out of the plant and stated "you are not authorized to talk to any employees and you are not to be allowed back in here until next Tuesday." (Neither Behrman nor Brackin was called to testify.)

The defense witness, packer Strait, is 35 years old and is 5 feet, 8 inches tall, as compared to packer Griffey, who is 59 years old and a "very small" person. Although acknowledging that she is "much taller and bigger" than Griffey, Strait claimed that Griffey had threatened to "whip my ass" if Griffey found out that she was an informant, and that O'Connell had said, "I'll help her." Undoubtedly if this were true, and if Strait had informed Plant Coordinator Behrman that both Griffey and O'Connell had threatened her, Behrman would have assigned that reason for suspending O'Connell instead of referring to O'Connell's telling him how to run his plant or bringing anyone else in to run his plant. Strait, who gave discredited testimony about cleaning the bathroom being "fun," impressed me by her demeanor as being a most untrustworthy witness. I discredit her claim that Griffey and O'Connell threatened her, and credit O'Connell's testimony that in an earlier conversation, Strait insisted on knowing why "Everybody is treating me so cruel around here," and O'Connell finally told her, "Quite frankly, Katy, I do think you are an informant," without either O'Connell or Griffey threatening her in any way.

From all the circumstances, including the summary suspension of these two employees at a time when the Company was discriminatorily assigning them more arduous work—just 1 week from the date of the election when one of them had been a union observer and the other had spoken up to Plant Coordinator Behrman in support of the Union—I find that Behrman seized on the untrue information from informant Strait that Griffey had threatened her and decided, without any investigation to use that as a pretext for suspending Griffey and also to discriminatorily suspend O'Connell, for the 3 days, June 7, 8, and 11, to discourage their union membership in violation of Section 8(a)(3) and (1) of the Act.

2. O'Connell's written warning

When O'Connell reported to work at 7 a.m. on Wednesday, October 3, she asked Supervisor Whitecotton for permission to attend a parent-teacher conference at her children's school that morning at 11 o'clock. He granted her permission and she left about 10:45 and was gone about 45 minutes. Upon her return, as she credibly testified, Whitecotton told her, "I am writing you up because you put the Company in a bind for not being here." She said, "David, I left at quarter till 11:00" ("we go on break at 11:00–our lunch break was from 11:00 o'clock until twenty after 11:00") "and I was back approximately at 11:30. . . . I don't feel I put the Company in a bind." Refusing to sign the "green slip," she asked, "Why are you writing me up when . . . two or three hours ago you informed me that it was all right to go?" He responded, "That's the penalty that you have to pay for having children."

As indicated above, Supervisor Whitecotton gave discredited testimony that he did not observe any changes in the duties of O'Connell and Griffey after the election. (Since his promotion to supervisor, he has been laid off, but he testified that he has talked to Plant Manager Clyde Griffith and Vice President Gary Sharman and is hoping to go back to work for them.) When questioned about the written warning, he admitted that he had given O'Connell permission to attend the parent-teacher conference, but he denied giving her any kind of warning. He further denied on cross-examination being aware that an allegation had been made in the complaint that he had given O'Connell an unwarranted written warning.

Ignoring the fact that O'Connell recorded the incident in her pocket calendar (writing "D. Whitecotton" under "PTC" in the square for October 3), the Company argues in its brief that O'Connell's testimony about the written warning "appears fictitious" and "another of her misrepresentations of facts." Although the Company vigorously attacks her credibility, O'Connell impressed me by her demeanor on the stand, particularly during her extensive cross-examination, as being a most sincere witness, doing her best to give an accurate account of what happened. I credit her testimony about the written warning and find that Whitecotton denied giving her the warning because it was obviously discriminatorily motivated.

Accordingly, I find that the Company discriminatorily gave O'Connell an unwarranted written warning on October 3 in violation of Section 8(a)(3) and (1) of the Act.

3. Refusal to reinstate O'Connell and other strikers

a. *The October 16 deadline*

On Thursday, October 11, after months of unsuccessful negotiations for a first agreement, the Union went on an economic strike, with only about a fourth of the employees participating.

On Monday morning, October 15, after 7:30 or 8 o'clock, employee O'Connell observed a reporter from the Hartford City newspaper, Doug Driscol, go to the factory door at Plant 2 and saw Plant Manager Griffith come out to greet him. Later that day, the newspaper carried front page headlines, "Cutting strikers to be replaced." (From the beginning of the strike, the Company had advertised for the "Immediate Hiring!" of permanent strike replacements in the classifications of operators, packers, etc., but the Company had withheld hiring any replacements.) The first paragraph of the newspaper story, carrying Driscol's by-line, stated that a spokesman for the Company said that union members "will be permanently replaced if they fail to report to work Tuesday" (October 16).

When called as a defense witness, Griffith testified on cross-examination:

> Q. . . . were you ever interviewed by any newspaper man or woman concerning strikers returning to work on October 16, 1979?
>
> A. I did talk to a couple, yes.
>
> Q. . . . And presumably you talked to them somewhere about October 15 or 16, 1979?
>
> A. I would say you are probably right, yes. The time I talked to them was during the strike.

(I note that the same October 16 deadline was also published in the October 15 edition of the Muncie newspaper.) Thereafter, Griffith denied that anybody from the Company gave the newspaper the October 16 deadline for returning to work. In part of his cross-examination, though, he made an admission to the contrary. As he was being questioned about the eighth paragraph of the Hartford City News-Times article (G.C. Exh. 10), which purports to quote Griffith himself, he read along with the attorney for the General Counsel and the paragraph was read into the record twice. The paragraph stated:

> According to Griffith, of the 53 employees at the plants, only 18 remain off their jobs. Those will be *permanently replaced tomorrow* if they don't report for work, he said. [Emphasis supplied.]

After testifying, "That's probably my statement . . . they do twist words around, but that's basically what I said in that statement," he finally gave an unequivocal answer:

> Q. It is an accurate account of what you told the newspaper?
>
> A. Um-hum.
>
> JUDGE LADWIG: What is your answer?
>
> THE WITNESS: Yes, it is accurate.

However, after making this admission, he thereafter returned to the Company's defense and claimed that "[t]here may be one word in there that is not right . . . 'tomorrow'" and that it was "probably" on Friday, October 12, when he had the conversation with the reporter, although "[i]t could have been Monday." Finally on redirect examination, he positively denied telling any reporter or anyone else that the strikers had until October 16 to report back to work before being permanently replaced. (He did not impress me as being a candid witness.) I discredit his denials and credit his admission that he told the reporter (on October 15) that the strikers "will be permanently replaced tomorrow if they don't report for work."

About 7 p.m. that same day, Monday, October 15, Union President David Lillard telephoned Plant Manager Griffith and told him that the strikers "would be returning to work tomorrow to meet your deadline." Griffith responded that no jobs were available, that they "had all been permanently replaced." At 7 o'clock the next morning, Tuesday, October 16, all of the former strikers (including O'Connell) attempted to return to work, but the Company advised them at both plants that they had been permanently replaced.

b. *Belated hiring of replacements*

About 8 o'clock that same Tuesday morning (although the date is in dispute), Supervisor Whitecotton began telephoning applicants to offer them permanent employment at plant 2. Meanwhile, Production Manager James Sandoe was calling other applicants for permanent employment at plant 1. As directed by Plant Manager Griffith, Personnel Assistant Zella Taylor had pulled applications from the files and had given them to Whitecotton and Sandoe, whom Griffith had instructed "to make the calls and see if these people who were available could *start work immediately*." (Emphasis supplied.)

When asked on cross-examination the time of day when he started hiring employees (interviewing them over the telephone), Supervisor Whitecotton guessed it was "Probably around 8 o'clock," give or take 15 minutes, and testified that he continued right through the noon hour (finishing the hirings by 2 p.m.). On redirect examination he was given the opportunity to change this starting time (which conflicts with testimony given by

Griffith and Vice President Gary Sharman, as discussed later), but he did not change his estimate:

> Q. These times when you talk about 8 o'clock in the morning and things taking 5 minutes and 2 o'clock in the afternoon and so forth. You're approximating and guessing back to the correct times. You don't know the—
>
> A. I can tell them that at 1:45 I had everyone hired.

Production Manager Sandoe, when asked what he would tell the applicants, testified:

> I asked them to come in the next morning at 8:00 o'clock to see the Personnel Director, that they had been hired, but they had to come in and fill out their forms before they could go to work. . . . I need you to come in at 8:00 o'clock tomorrow morning to report to work and you will have to see the Personnel Director and fill out the forms before you can proceed. . . . Like I said, the next day they had to all come in and report at 8:00 o'clock and then the Personnel Supervisor would take care of them. I don't actually recall the hour they went to work . . . I said they had to report in the next day at 8:00 o'clock and then they would be scheduled for physicals and *report right after their physicals to go to work*. [Emphasis supplied.]

Thus, although both Whitecotton and Sandoe claimed along with other defense witnesses that the hiring was done on Monday, October 15 (as discussed below), both of them gave testimony which revealed that the hiring was actually done on Tuesday, October 16, after the Company refused to reinstate the former strikers at 7 o'clock that morning. Whitecotton remembered that he began hiring replacements within 15 minutes of 8 a.m. (a time clearly earlier than the decision was made on Monday to hire replacements), and Sandoe repeatedly testified that he told the replacements to report at 8 o'clock the very *next* morning and told them they would go to work that same day, "right after their physicals" (thereby requiring them to report to work on Wednesday, the *next* day after Tuesday but the *second* day after Monday, October 15).

By quitting time on Tuesday, Sandoe at plant 1 and Whitecotton at plant 2 had hired a total of 13 employees—but only unskilled packers and no operators to replace the operators who had been on strike. The first 12 of the new employees went to work on Wednesday, October 17, and the other 1 started the following day. (At least 1 of the 12, Chalmer Williamson—who took his physical examination on October 30, not before going to work—went to Plant 2 on October 16 after being hired by Williamson and filled out a W-4 form, but he did not work that day.)

The evidence therefore reveals that on Tuesday evening, October 16, the Company was faced with the problem of a potentially large backpay liability. It had falsely claimed that morning (as well as the evening before) that it had already permanently replaced all of the strikers. When belatedly that Tuesday, it had hired 13 replacements, but only unskilled employees and nobody to replace the skilled employees who had gone on strike. The former economic strikers, after removing the picket lines on October 15, had made unconditional offers to return to work at a time when their jobs were still available, yet the 13 belatedly hired packers had been promised permanent status.

It was under these circumstances that the Company devised a way to limit its potential backpay liability to the former strikers whom it had refused reinstatement. Plant Manager Griffith telephoned Union President Griffith that Tuesday or Wednesday evening and announced the Company's decision to assign the former strikers to a new midnight shift at plant 1 beginning at 11 p.m. on Sunday, October 21. As it turned out, all of the former strikers (except O'Connell as discussed later) accepted the offer to work on the third shift, which lasted only about 1 week, after which the Company reassigned the former strikers to the first and second shifts at plant 1. Despite the promise of permanent status for the strike replacements, the Company recognized the returning strikers' seniority for purposes of layoffs and, in February 1980, laid off all of the replacements then remaining on the payroll. (One of the replacements had quit, one had been discharged, and one was rehired on a different job after being laid off.)

c. *The Company's defenses*

In its defense, the Company called five witnesses, Vice President Sharman, Plant Manager Griffith, Production Manager Sandoe, Supervisor Whitecotton, and Personnel Assistant Taylor, all of whom claimed that the permanent replacements were hired on Monday, October 15.

To disprove the accuracy of the October 16 deadline stated in the local newspaper (as well as in the Muncie newspaper), Griffith repeatedly disclaimed responsibility for the story, although during part of his cross-examination (as quoted above) he admitted the accuracy of the eighth paragraph of the news article in the October 15 local newspaper which stated that "[a]ccording to Griffith," the strikers " will be permanently replaced tomorrow if they don't report for work."

When called as a defense witness, Plant Manager Griffith first claimed that he did not talk to Vice President Sharman on October 15 until the replacements had already been hired (later in the day). He next testified that he talked to the Company's labor counsel on October 15 and claimed that he then, "sometime in the morning," talked to Sharman, telling him "what I was doing," before having Personnel Assistant Taylor pull the applications and give them to Sandoe and Whitecotton to do the hiring. Sharman, in turn, had a different version. He testified that he met with Clyde Griffith Monday morning, "maybe 9:00 or 10:00 o'clock when Clyde and I got around to it," that they discussed it in detail, that he himself made the final decision to hire the replacements that same day, and that "[a]t that time I directed Mr. Griffith to go ahead and hire people and get them into work." Of course, if Sharman made the final decision to hire replacements about 9 or 10 a.m. that Monday, Supervisor Whitecotton would not have started hiring re-

placements that same morning around 8 o'clock. Moreover, as indicated above, Griffith admittedly told Sandoe and Whitecotton to see if the available applicants could start to work *immediately*, and Sandoe admittedly told those applicants he hired to report at 8 o'clock the *next* day—whereas the replacements did not begin working until *2 days* after Monday.

When testifying first as an adverse witness, Personnel Assistant Taylor was asked to *read*, from the accounting records and personnel files before her, the hiring dates of the strike replacements. She then purportedly read off the hiring date of October 15 for each of the replacements, but later admitted that there were no documents in the company files which showed that the replacements were in fact hired on October 15. Taylor claimed that she called the company doctor on October 15 to make appointments for the physicals, but that he did not perform "all of them on October the 15th," that "some of them were on the 16th and that was the reason for the delay for reporting to work on the 17th." To the contrary, it is clear from the testimony of both Sandoe and Whitecotton that, even if they did the hiring on October 15 (instead of October 16, as found above), none of the replacements were sent to either plant on October 15 to obtain the papers for getting a physical examination. Furthermore, Sandoe told the replacements he hired that they were to go to plant 1 at 8 a.m. for their physicals and to "report right after their physicals to go to work." So even if physicals were given before they started working, the replacements at Plant 1 were told to go on to work that same day. Moreover the evidence is clear—contrary to Taylor's claim that they had "to have their physicals before they could report to work"—that that was not a requirement. The only personnel file examined in detail at the hearing revealed that the replacement, Chalmer Williamson, went to work on October 17 and did not have a physical examination until October 30. (It is undisputed that similarly, O'Connell did not have her physical examination until about a month after she was hired in 1978.) As discussed later, Taylor gave discredited testimony about a conversation with O'Connell to support the Company's purported justification for terminating her on October 18. Like the other four defense witnesses who claimed that the hiring was done on October 15, she did not impress me as being a candid witness. I discredit their testimony that the hiring was done on October 15.

d. *Concluding findings*

As indicated above, I find that Production Manager Sandoe and Supervisor Whitecotton hired the 13 permanent replacements on Tuesday, October 16, the day before the first 12 of them reported to work.

Because of the conflicting versions given by Vice President Sharman and Plant Manager Griffith about the making of the decision to permanently replace the strikers (Sharman claiming that he made the decision himself after a detailed discussion with Griffith about 9 or 10 a.m. on Monday, October 15, and Griffith first claiming that he did not talk to Sharman that day until after the hiring, and later claiming that he discussed the hiring with the Company's labor counsel before telling Sharman that morning what he had decided to do), I am unable to determine from the evidence when the decision was actually made. It appears clear that when Griffith gave the news story to the Hartford City News-Times reporter about 8 o'clock on Monday morning that the strikers would be "permanently replaced tomorrow if they don't report for work," he had no intentions at the time of hiring replacements immediately. However, I have no way of determining if the Company had second thoughts sometime during the day and made plans to start hiring replacements the next morning whether or not the strikers called off the strike, or if Griffith made the decision on his own to claim that replacements had already been hired when Union President Lillard called him that evening and said the strikers would return the next morning—and then talked to Sharman about hiring replacements immediately. Neither do I have reason to doubt that Supervisor Whitecotton was telling the truth when he recalled that he started hiring replacements about 8 a.m. (although this necessarily would have been on Tuesday rather than on Monday, before the decision was made to hire replacements under either Sharman's or Griffith's version).

Accordingly I find that the Company had not hired permanent replacements for O'Connell and the other former strikers by 7 a.m. on Tuesday, October 16, when they made unconditional offers to return to work. Jobs were available both at Plant 1 where Griffith admitted that "Up until Christmas we were extremely busy," and at plant 2 where there had been no stockpiling in preparation for the strike and where the Company has not established that any change in the staffing requirements had been made since the preceding Thursday when the strike began.

It is well established that "unless the employer who refuses to reinstate strikers can show that his action was due to "legitimate and substantial business justifications" [such as the hiring of permanent replacements during an economic strike in order to continue operations], he is guilty of an unfair labor practice. . . . The burden of proving justification is on the employer." *N.L.R.B.* v. *Fleetwood Trailer Co., Inc.*, 389 U.S. 375, 378–379 (1967). The Company has not met that burden of proof. I therefore find that the Company unlawfully refused to reinstate O'Connell and the other former economic strikers upon their unconditional offers on Tuesday morning, October 16, to return to work, thereby violating Section 8(a)(3) and (1) of the Act. In making this finding, I note that in neither a charge herein (Case 25-CA-11655-1) nor the charge in Case 25-CA-11478 which was withdrawn (Resp. Exhs. 22 and 23) was there a specific allegation that the Company unlawfully violated the Act on October 16 when it claimed that permanent replacements had been hired. However the second consolidated complaint specifically alleged that the Company unlawfully refused to reinstate O'Connell on October 16, and the parties fully litigated at the hearing the issue of whether the strikers at both plants had been permanently replaced before they made their unconditional offers to return on October 16.

4. O'Connell's termination

Although O'Connell's discharge was not specifically alleged in the second consolidated complaint, a major part of the Company's brief, pages 33-45, is entitled "The Termination of Pam O'Connell."

It was developed at the hearing that on October 18, 2 days after she appeared with other former strikers at plant 2 and unconditionally offered to return to work, the Company formally terminated her by executing a "Payroll/Personnel Authorization Record" which stated, under her name and over the signatures of Zella Taylor and Clyde Griffith (G.C. Exh. 2):

> *Termination Date* The above employee has been terminated for the reason—Per David Lillard—Clyde Griffith telephone conversation this date—Pam will not be returning. She intends to stay home and as of 11/18/79 be a housewife.

As found above, Plant Manager Griffith telephoned Union President Lillard on the evening of October 16 or 17 and offered to assign the former strikers to a new midnight shift at plant 1, beginning at 11 p.m., October 21. Thereafter Lillard checked to determine which of the former strikers would accept this offer to the third shift. All of them agreed to accept the offer except O'Connell, who told Lillard, "No, there was no way I could at that particular time because of my four children," and explained that her husband was working on a swing shift on his job, leaving nobody at home to take care of the children when both parents would be working at midnight.

Lillard reported back to Griffith around October 18 that all of the former strikers would be returning to work the midnight shift except O'Connell. Griffith asked if Lillard knew why O'Connell was not returning. As Lillard credibly testified, he replied, "Yes, I *think* she's going to stay home and be a housewife." (Emphasis supplied.) Immediately, without waiting until Sunday to see if O'Connell decided to return and without checking with her directly, Griffith instructed Personnel Assistant Taylor to fill out the termination sheet for O'Connell.

Then at the hearing, Taylor and Vice President Sharman gave what I find to be fabricated testimony in an effort to justify O'Connell's termination.

Taylor claimed that on October 11, the first day of the strike, O'Connell went from plant 2 where she worked to plant 1 to pick up her paycheck and, in the presence of Sharman, told Taylor "That she was going to stay home and be a housewife and that she wouldn't be working." Sharman gave a conflicting version. He claimed he overheard O'Connell say, "I won't be back because *I don't need this job*" (emphasis supplied)—despite the fact that it is undisputed that O'Connell remained on the picket line until the pickets were pulled on October 15, and offered to return to work with the others on October 16. In fact, as O'Connell credibly testified, she was paid at plant 2 on October 11, and she had no conversation with Taylor about not returning to work when Taylor handed her her paycheck through the window at plant 1 a week later on October 18, the third day after the strike ended.

I also find that Sharman gave fabricated testimony when he claimed that Union President Lillard informed Plant Manager Griffith on the telephone Monday evening, October 15, that the strikers "would be all coming back to work with the exception of Pam O'Connell who had informed him that she was staying home to be a housewife." To the contrary, Griffith admitted that, in the October 15 telephone conversation, "Mr. Lillard related that the employees had decided to come back to work and they were *all* going to return on the 16th." (Emphasis supplied.)

The Company contends in its brief that, inasmuch as O'Connell and the other strikers had been permanently replaced before 5 p.m. on October 15, its only legal obligation to her was to place her on a preferential hiring list, to make an offer to her as openings became available, that an opening did become available (on the midnight shift at the other plant), that the offer was made to her through the union president, that he reported back that she did not accept the offer, and that "O'Connell never contacted the Company in regard to employment subsequent to the strike and, therefore, she is not entitled to any backpay." The Company concludes, "Consequently, the facts compel dismissal of the allegations of the complaint in regard to O'Connell's *discharge.*" (Emphasis supplied.)

After considering all of the evidence and circumstances, I find to the contrary that O'Connell was not permanently replaced, that she was never offered proper reinstatement to her former or substantially equivalent position after her unconditional offer to return to work on October 16 was unlawfully rejected, and that the Company has demonstrated by its conduct (formally terminating her on October 18 and fabricating testimony at the hearing to justify the termination) that it would have been futile for her to have applied again for reinstatement. I therefore reject the Company's contention that she is not entitled to any backpay and agree with the General Counsel that she is entitled to the customary reinstatement with backpay. (In view of the fact that the remedy would be the same, I find it unnecessary to rule on whether her October 18 termination violated Section 8(a)(3) of the Act.)

B. *Threat To Discharge the Union's President*

Before the May 31 election, the Union filed one of the charges herein (Case 25-CA-10983), alleging the discriminatory discharge of five employees during the election campaign and the constructive discharge of a sixth. The first consolidated complaint alleged only one unlawful discharge (that of Rick Hodge, discussed later).

Meanwhile Union President David Lillard was having "some severe problems with absenteeism." Plant Manager Griffith's testimony is undisputed that Lillard had received verbal and written warnings, had been suspended, and, "[a]t one point, he could have been up for termination" under the Company's progressive discipline policy.

It was under these circumstances that Lillard's discharge was discussed sometime in December when two members of the union contract committee were in Vice

President Sharman's office with Sharman and Griffith. While awaiting the arrival of the Union's committee member, Frances Griffey, as credibly testified to by Lillard, Sharman asked Lillard "if my job was so bad and I didn't like it, why I just didn't quit." Lillard said he liked his job and Sharman responded, "Well, that doesn't make any sense Dave, because you've got a lot of problems and you're always complaining." Lillard said he knew what Sharman was going to do, that Sharman was "going to fire me as soon as you get the chance," to which Sharman responded, "that's right Dave, *I'm going to fire you as soon as I can sneak it past the NLRB.*" (Emphasis supplied.) Union Committee Member Kathy Connor (who impressed me as being an honest witness) recalled that Lillard "said that he knew what Gary Sharman wanted to do . . . that he wanted to fire him and Gary said that's right David, as soon as I can sneak it past the NLRB, he would."

In the Company's defense, Griffith testified that, after Lillard remarked, "you would fire me if you could," Sharman's answer was "he'd terminate any employee . . . if they didn't do their job." Sharman, in turn, claimed that Lillard "brought up . . . his job security . . . and I said to him that if he didn't do his job that he would probably lose his job the same for Clyde and myself . . . that none of us had any kind of security and . . . myself, probably less than anybody . . . that if none of [us] performed, that we would all lose our jobs." I discredit their denials and find that Vice President Sharman unlawfully threatened the union president with discharge because of his union activity, in violation of Section 8(a)(1) of the Act.

C. *Other Alleged Unlawful Conduct*

1. Before the election

The first complaint alleges that in May (before the election on May 31), the Company discriminatorily discharged employee Rick Hodge, who did not appear at the hearing to testify. I find it clear that, in the absence of his testimony, the General Counsel failed to make a *prima facie* showing that the Union was a motivating factor in the Company's decision to discharge him. In addition, I credit the testimony of Foreman Mike Keith (who impressed me as being an honest, forthright witness) that Hodge was a probationary employee who was not developing into a satisfactory employee, was not putting enough effort into his work, and, because of back problems, was complaining about having to run his machine a full 8 hours. I therefore find that this allegation must be dismissed.

The complaint alleges that in employee Frances Griffey's conversation with Plant Coordinator Behrman in his office on May 31—when she explained why she was wearing the 4-inch "VOTE UPIU" badge—Behrman coercively interrogated her. She testified that when she stated, "That's why I'm wearing this badge," he "said, are you for the Union and I said you bet and I'm going to work like a dickens for it." I agree with the Company that "[i]t is inconceivable that Behrman's mere response to Griffey's comment about her support for the Union constituted an unlawful interrogation." I therefore find that the allegation must be dismissed.

The complaint alleges that Foreman Beth Bennett threatened employees with discharge and plant closure on March 20 and coercively interrogated employees on that date and on March 28. Employee Janet Teegarden credibly testified that in a conversation lasting about 15 minutes on March 20 in her work area, in the presence of other employees in the area, Bennett asked her if she knew anything about a union coming in, what she knew about it, and if she were going to sign a union card. Bennett then said that, if she signed a union card and the Union comes in, "we won't have jobs . . . we will just move the plant . . . [Owner] Stewart Maynard has a place picked out down South and if the Union tries to organize, they will just move it and we won't have jobs." In the second conversation, about a week later, Bennett talked to her again, for about 10 or 15 minutes, at her work station without anybody around. Bennett asked, "if I did sign a card . . . if I had union cards and if I was giving them out to other people . . . if they were signing them, who signed the cards." In the Company's defense, Packing Supervisor Bennett testified that it was "just general talk" about a union—before she knew of any specific union organizing and before the supervisors were told "not to talk about it"—and that she told Teegarden "I hoped that a union didn't come in, beause I had heard that there was a possibility that they could move the company to Missouri." Teegarden appeared to have a good recollection of the threat and the interrogation. I credit her version and find that the threat of discharging the employees and moving the plant and the repeated interrogation particularly in the context of such a threat were coercive and violated Section 8(a)(1) of the Act as alleged.

The complaint alleges that Foreman Mike Keith on May 1 and 2 "by soliciting employee complaints and grievances promised its employees increased benefits and improved terms and conditions of employment." It is undisputed, as packer O'Connell credibly testified, that, about the first part of May, Keith came to her machine and, in the presence of other employees, asked, "Pam, are you aware of what you are getting yourself involved in, when you are getting yourself involved with the Union?" and "what exactly is it that you are wanting that . . . the Company is not giving to you?" She mentioned needing floormats and complained about glue guns with electrical shorts, cut wire on the floor, broken toilet seats, etc. However, she readily admitted on cross-examination that Keith did not promise to provide the floormats or to remedy any of the other problems. (The Company's furnishing the packers with doormats on May 30 is not alleged to violate the Act.) In the absence of such an express or implied promise, I find that this allegation must be dismissed.

The complaint also alleges that President Jennerjahn likewise "by soliciting . . . promised . . . increased benefits" on May 5, 8, and 24. However, I find that the evidence fails to support this allegation as well. The General Counsel's witnesses, who had difficulty remembering the dates and number of times Jennerjahn conducted

plant meetings, merely testified that he pointed out the existing practices for resolving complaints and problems (through the plant council and going directly to him), without promising any increased benefits. I therefore find that this allegation must also be dismissed. (The Company did not call Jennerjahn, Behrman, or Brackin to testify. None of the three is still working for the Company, and Jennerjahn and Behrman are currently engaged in litigation with the Company over an alleged patent infringement.)

2. During the strike

On October 12, the second morning of the strike, striking employees Griffey and O'Connell were on the picket line at plant 2 with two other pickets. Griffey was standing with a picket sign behind a fire barrel which she had obtained the mayor's permission to place on the sidewalk for warmth. Vice President Sharman arrived with a photographer (one of the guards hired to protect the Company's property during the strike), and went with him to the middle of the street where the photographer pointed the camera at Griffey. When Griffey pushed the sign in front of her face, Sharman told her, "Sally put your sign down I want to see your face." She said she had not authorized any of them to take her photograph and he responded that "we need your picture for evidence." O'Connell asked "What for?" and Sharman answered, "when we take you to Court." O'Connell asked, "Court, for what?" Sharman turned and walked away without answering. (I discredit Sharman's denials of this testimony.) The same photographer was there daily during the strike, taking pictures from the roof, from the doorway, while "hanging out the windows, downstairs and on the second floor," and from the street.

There was never any violence at the plant 2 picket line, and Sharman gave no reason for threatening to take the pickets to court or for taking Griffey's picture for that purpose. I find that Sharman's conduct, in making the threat and having the photographer take Griffey's picture on October 12 while the striking employees were engaged in peaceful picketing, was to intimidate the pickets and to make them fearful of reprisals for engaging in a lawful strike and picketing. I therefore find that, on October 12, Vice President Sharman engaged in unlawful surveillance of the peaceful picketing and coercively threatened the employees with legal proceedings for lawfully striking and picketing, in violation of Section 8(a)(1) of the Act. (The complaint does not allege that the other photographing of the picketing at the two plants further violated the Act.)

3. After the strike

On November 14 (about a month before the signing of the 2-year collective-bargaining agreement, effective from October 11, 1979, until October 11, 1981), Vice President Sharman went to the machine where the Union's committee member, Griffey, was working. Sharman first asked if Griffey were aware that Union Representative Jack Meyers was going to sign the agreement, and then informed her of the Company's thoughts of having the employees work four succeeding Saturdays, closing the plant from December 21 until January 2, and deferring the Saturday pay until the Christmas holidays, enabling the employees to be off 11 days and still receive a full paycheck. Griffey said that sounded like a super idea. A few minutes later, when Griffey was on break, Sharman returned and asked her how the new agreement would affect the Christmas holiday plan, commented that the people sitting on the negotiating teams did not know what they were doing, said that this was what the Union was doing for the employees— "they don't want to pay you for your holiday," and added that the Company was going to be "good people" and give the employees the holiday pay anyway. He also asked her (as a committee member) if she would sign the agreement. She admitted on cross-examination that the discussion of holiday pay and the signing of the agreement were two separate matters, and that Sharman did not indicate that the holiday pay was an inducement not to sign the agreement. (I discredit Sharman's denial that holiday pay was even discussed.) Contrary to the allegations in the second complaint, I find that Sharman's questioning of committee member Griffey about the signing of the agreement was not coercive interrogation concerning union membership, activities, or sympathies, and further find that he did not promise the employees "increased benefits and improved terms and conditions of employment, in an effort to induce employees to abandon their membership in and support for the Union." I therefore find that these two allegations must be dismissed.

CONCLUSIONS OF LAW

1. By refusing to reinstate employees Pamela O'Connell, Frances Griffey, and other former striking employees on October 16 after their unconditional offers to return to work, the Company engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

2. By assigning employees O'Connell and Griffey more arduous job tasks after the election in retaliation against them because of their support of the Union, and by discriminatorily suspending them on June 7, 8, and 11 because of their union support, the Company also violated Section 8(a)(3) and (1) of the Act.

3. By discriminatorily giving employee O'Connell an unwarranted written warning on October 3 because of her union support, the Company further violated Section 8(a)(3) and (1) of the Act.

4. By threatening to discharge Union President David Lillard because of his union activity, the Company violated Section 8(a)(1) of the Act.

5. By threatening to discharge the employees and move the plant if the employees support the Union and by engaging in repeated coercive interrogation, the Company violated Section 8(a)(1) of the Act.

6. By engaging in unlawful surveillance of peaceful picketing and threatening employees with legal proceedings for lawfully striking and picketing, the Company coerced and intimidated employees in violation of Section 8(a)(1) of the Act.

7. The Company did not unlawfully discharge employee Rick Hodge; did not coercively interrogate employee

Griffey; did not, by soliciting complaints and grievances, promise increased benefits and improved terms and conditions of employment; and did not make such a promise to induce employees to abandon their union support.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having unlawfully refused to reinstate employee Pamela O'Connell on and since October 16, 1979, having unlawfully refused to reinstate employee Frances Griffey and other former striking employees on October 16, 1979, and having discriminatorily suspended O'Connell and Griffey for 3 days; I find it necessary to order the Respondent to offer O'Connell reinstatement with compensation for lost pay and other benefits, computed on a quarterly basis from October 16 until date of proper offer of reinstatement, less net interim earnings, to compensate Griffey and other striking employees who made unconditional offers on October 16 to return to work, for such lost earnings from that date until they were reinstated on October 21, and to compensate O'Connell and Griffey for the earnings lost as a result of their 3-day suspension, in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950), plus interest as computed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the foregoing findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[3]

The Respondent, Cutting, Incorporated, Hartford City, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to reinstate any economic striker who unconditionally offers to return to work before being permanently replaced.

(b) Assigning any employee more arduous job tasks in retaliation for supporting Local 154, United Paperworkers International Union, AFL-CIO-CLC, or any other union.

(c) Giving an unwarranted written warning to or suspending any employee for supporting the Union.

(d) Threatening to discharge the employees or to move the plant if the employees support the Union.

(e) Threatening to discharge any union official because of the union activity.

(f) Coercively interrogating any employee about union support or union activity.

(g) Engaging in unlawful surveillance of peaceful picketing or coercively threatening employees with legal proceedings for lawfully striking and picketing.

(h) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer Pamela O'Connell immediate and full reinstatement to her former job or, if her job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and make her whole for any loss of pay or other benefits she may have suffered by reason of the refusal to reinstate her in the manner set forth in the Remedy section.

(b) Make Frances Griffey and other former economic strikers who made unconditional offers to return to work on October 16, 1979, whole for any lost earnings from that date until their reinstatement on October 21, 1979, in the manner set forth in the Remedy section.

(c) Make Pamela O'Connell and Frances Griffey whole for any lost earnings resulting from their discriminatory 3-day suspension in the manner set forth in the Remedy section.

(d) Expunge from the personnel records any reference to the unwarranted written warning given Pamela O'Connell and to the discriminatory suspension of her and Frances Griffey.

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its plants in Hartford City, Indiana, copies of the attached notice marked "Appendix."[4] Copies of said notice, on forms provided by the Regional Director for Region 25, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS ALSO ORDERED that the complaints be dismissed insofar as they allege violations of the Act not specifically found.

[3] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[4] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."